IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH POUSHA 1928

WP(C).No. 36093 of 2004(V)

AGAINST THE ORDER IN EP.NO.158 /1997 IN
LAR.328/1978 of ADL.SUB COURT, THALASSERY

.....

PETITIONER:

PUTHAN VEETTIL MAVILA KUNHANANDAN
NAMBIAR, KEEZHUR P.O., IRITTY,
KANNUR DISTRICT.

BY ADV. SRI.K.V.SOHAN
SRI.JOYAN P. ANTONY
SMT.SREEJA SOHAN.K.
SMT.K.AMBILY
SMT.NAJMA ALI

RESPONDENTS:

---

1. THE SPECIAL TAHSILDAR,
L.A. & L.A.O., MATTANNUR AT VELIYAMBARA,
KANNUR DISTRICT.

2. GOVERNMENT OF KERALA,
IRRIGATION DEPARTMENT, SECRETARIAT,
TRIVANDRUM.

BY GOVERNMENT PLEADER V.T.K.MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX:

EXT.P1: COPY OF JUDGMENT IN LAR 328/78 DT.31/5/86

EXT.P2: COPY OF JUDGMENT IN LAA 422/86 DT.23/11/92

EXT.P3: COPY OF REVISED JUDGMENT IN LAR 328/78 DT.8.3.93

EXT.P4: COPY OF JUDGMENT IN LAA 538/93 DT.15.2.96

EXT.P5: COPY OF JUDGMENT IN LAA 328/78 DT.30/11/96

EXT.P6(a):COPY OF EXECUTION PETITION AS EP 158/97 DT.25.6.92

EXT.P6(b):COPY OF ORDER IN EP 158/97 DT.26.9.03

EXT.P7: COPY OF AFFIDAVIT FILED BY R1

//True copy//

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.36093 OF 2004

Dated 3rd January 2007

J U D G M E N T

Petitioner is claimant in L.A.R.328/1978 before Sub court, Thalassery. Enhanced compensation was awarded by the Land Acquisition court as per judgment dated 31/5/1986. It was challenged before this court in L.A.A.422/1986. This court set aside the judgment and remanded the case back to Land Acquisition court on 23/11/1992. After remand on 8/3/1998 another ex-parte award was passed by Land Acquisition court. That was challenged before this court in L.A.A.538/1993. As per judgment dated 15/2/1996 case was once again remanded back to the Land Acquisition court. As per judgment dated 30/11/1996 enhanced compensation was granted. Petitioner filed E.P.158/1997 for attachment and sale of the properties of the respondent for realisation of the balance enhanced compensation. Execution petition was dismissed as per order dated 26/9/2003 which reads as follows;

> "No amount is due to the petitioner as per the decree. It is also seen that an excess payment is made by respondent to the petitioner. The E.P is dismissed with liberty to take steps to subject to the provisions of law to realise the excess amount paid to the petitioner."

2. Case of the petitioner is that there was no excess amount and instead amount was due to the petitioner and executing court did not consider the question and passsed the order without hearing the parties. Ext.P6 copy of execution petition shows that execution petition was filed on 17/6/1997 and because of the defect it was returned and thereafter re-presented on 25/6/1997 and order was passed on 26/9/2003. Order does not show on what basis executing court found that no amount is due and instead there was excess payment. In such circumstances, the order dated 26/9/2003 is set aside. E.P.158/1997 is remanded back to the executing court for fresh disposal in accordance with law. In view of the three awards passed by Land Acquisition court and because of setting aside of the

award of this court and deposit made by the State during the said period executing court has to find out what is the actual amount due to the petitioner as per judgment dated 30/11/1996 and what amount was deposited by the State and whether any balance amount is payable to the decree holder or any excess payment has been made to the judgment debtor. Learned Sub Judge shall pass appropriate order in accordance with law in the light of the decision of the Apex court in **Gurpreet Singh v. Union of India (2006 (8) SCC 457**).

Writ petition is disposed accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.